



Paper No. 11

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**OFFICE OF PETITIONS**

In re Application of :  
Mueller et al. :  
Application No. 09/993,228 : DECISION GRANTING PETITION  
Filed: 14 November, 2001 :  
Atty Docket No. 00-106 :

This is a decision on the petition filed on 7 March, 2002, and supplemented on 19 July, 2002, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 14 November, 2001, with a complete specification, including at least one claim, as a part of the original disclosure.

On 14 November, 2001, the application was filed.

On 28 January, 2002, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the specification did not include at least one claim. Additionally, the notice required, *inter alia*, a substitute specification in compliance with 37 CFR 1.52.

In response, on 7 March, 2002, the present petition, accompanied by a \$130.00 petition fee. Petitioner argues that a complete specification, including seven (7) claims, was filed with the other application papers on 14 November, 2001, and that the pages containing the claims were misplaced in the U.S. Patent and Trademark Office (Office). A substitute specification was also filed with the petition. A Request for Information was mailed on 9 July, 2002, however, because petitioners had not included a copy of the specification as originally filed. Petitioners were given one (1) month to submit a copy of the specification as originally filed on 14 November, 2001.

In response, on 19 July, 2001, a copy of the specification as originally filed was submitted. In support of the petition, a copy of petitioner's postcard receipt was supplied on 7 March, 2002. The postcard receipt, which shows an "Office-date" stamp of 14 November, 2001, and containing the above-identified application number, identifies the application by first named inventor's last name, attorney docket number, and invention title, and acknowledges

receipt of, *inter alia*, Patent Application (99 pp.). Petitioner requests that the application, including 99 pages of specification, including claims, be accorded a filing date of 14 November, 2001.

Upon review of the record, 46 pages of specification deposited on 14 November, 2001, have been located among the application papers. However, the evidence is convincing that the application papers deposited on 14 November, 2001, included 99 pages of specification, including seven (7) claims, of which 53 pages were subsequently misplaced in the USPTO. Therefore, the application, including 99 pages of specification, including seven (7) claims, was complete on filing and entitled to a filing date of 14 November, 2001.

In view of the above, the petition is granted. The application will be processed with the 46 pages of specification filed on 14 November, 2001, and the copy of the additional 53 pages of specification, including the claims and abstract, supplied on 19 July, 2002. The copy of the originally filed 46 pages of specification supplied on 19 July, 2002, will not be used for processing or examination, but will be retained in the application file. The petition fee is unnecessary and will be credited to counsel's deposit account, No. 50-0271.

The "Notice" mailed on 28 January, 2002, was sent in error and is hereby withdrawn.

Receipt is acknowledged of the substitute specification filed on 7 March, 2002. The substitute drawings is not part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being returned to Initial Patent Examination Division for processing with a filing date of 14 November, 2001, using the application papers filed on that date, and the 53 pages of specification, including claims and abstract, supplied on 19 July, 2002, and for an indication on the bib-data sheet that seven (7) claims were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703 308-6918.



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